

11/3/03  
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The opinion in support of the decision being entered today was not written for publication in a law journal and is not binding precedent of the Board.

Paper No. 24

UNITED STATES PATENT AND TRADEMARK OFFICE

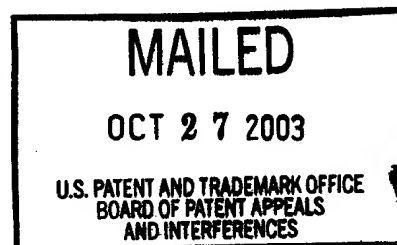
REVIEW DATE: 11/27/03

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte MICHAEL C. SCROGGIE, DAVID A. ROCHON,  
DAVID W. BANKER and WILL GARDENSWARTZ

Appeal No. 2002-0329  
Application No. 09/505,632

ON BRIEF



Before KRASS, JERRY SMITH and RUGGIERO, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 24-31, 34, 36-43, 46, 48 and 49.

The invention maintains a database of manufacturer offers and retailer special deals at a cooperative network site where consumers can access at least a subset of the data in the database from any manufacturer or retailer network site.

APDEC-CAT34SCROCCP-031103 CS

Accordingly, it makes little difference which site, whether manufacturer or retailer, that the consumer is logged in to when initiating the request since the data is received directly from the cooperative site. The result is that manufacturer offers and retailer special deals are exposed to many more consumers.

Representative independent claim 24 is reproduced as follows:

24. A computer network implemented method, comprising the steps of:

transmitting from a consumer computer over the Internet to a Web site of a manufacturer a request for manufacturer incentives to purchase one of a product and a service offered by said manufacturer;

in response to said request for manufacturer incentives, transmitting region data from said Web site of said manufacturer over the Internet to a remote Web site;

in response to receipt of region data at said manufacturer's Web site, transmitting from said remote Web site to said Web site of said manufacturer at least one manufacturer incentive and at least one name and address of a retailer; and

transmitting from said Web site of said manufacturer over the Internet to said consumer computer said at least one manufacturer incentive and said at least one name and address.

The examiner relies on the following references:

Smolen	5,915,243	Jun. 22, 1999 (filed Aug. 29, 1996)
Sloane	5,918,211	Jun. 29, 1999 (filed May 30, 1996)

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Hoffman et al. (Hoffman)                      6,012,039                      Jan. 4, 2000  
(effectively filed Aug. 29, 1996)

Claims 28, 34, 40 and 46 stand rejected under 35 U.S.C.  
§ 102(e) as anticipated by Sloane.

Claims 24-27, 29-31, 36-39, 41-43, 48 and 49 stand rejected under 35 U.S.C. § 103. As evidence of obviousness, the examiner cites Sloane and Hoffman with regard to claims 24, 25, 27, 29, 36, 37, 39, 41, 48 and 49, adding Smolen to this combination with regard to claims 26, 30, 31, 38, 42 and 43.

Reference is made to the briefs and answer for the respective positions of appellants and the examiner.

#### OPINION

Turning, initially, to the rejection under 35 U.S.C. § 102(e), an anticipatory reference is one which describes all of the elements of the claimed invention so as to have placed a person of ordinary skill in the art in possession thereof. In re Spada, 911 F.2d 205, 15 USPQ2d 1655 (Fed. Cir. 1990).

It is the examiner's position that Sloane discloses, at column 7, lines 5-10, the transmission from a consumer computer of a request for manufacturer incentives; at column 7, lines 13-

22, the transmission of region data from the website of a manufacturer in response to the request for manufacturer incentives; at column 7, lines 22-26, transmission from a remote website to the manufacturer website at least one manufacturer incentive and at least one name and address of a retailer in response to receipt of region data at the manufacturer's website; and, at column 7, lines 36-40, updating a manufacturer's incentive database.

The examiner also cites column 8, lines 3-7, of Sloane as part of the rationale for the rejection.

The examiner contends that it is inherent to include graphical image data corresponding to manufacturer incentives because Sloane does disclose that his communication line can be an online computer network or the Internet (column 7, lines 18-22) -See answer-page 4.

It is appellants' view that although Sloane does disclose processing incentives between a retailer, or product manufacturer, and a retailer computer/controller 12 over a communication network 200, Sloane does not disclose or suggest distributing product incentives to consumers over the internet (principal brief-page 7). Furthermore, argue appellants, "the communication sequence defined by the present invention is

clearly a request-response transaction involving three distinct entities, namely, a consumer computer, a manufacturer website, and a remote website, using a request-response communication protocol" (reply brief-page 2).

We agree with appellants that the subject matter of independent claims 28 and 40 is not anticipated by Sloane. These claims clearly call for a transaction involving multiple separate entities, i.e., transmission from a consumer to a retailer website, transmission from the retailer website to a remote website, and transmission from the remote website to the retailer website, of a list of manufacturer incentives. Finally, the retailer website transmits to the consumer a list of these incentives.

In Sloane, there is no middle-man communication. Incentives are communicated to the consumer by either the retailer or another sender of information, e.g., the manufacturer. There is no transmission from a retailer website to a remote website in response to an inquiry from a consumer to the retailer website. The examiner identifies Figure 3b of Sloane, indicating that the sender of promotion information, 16, is indicative of a "remote website."

The sender of promotion information 16 in Sloane is, indeed, sent from a remote site, e.g., the manufacturer. However, this information is communicated as an alternative to the retailer supplying incentive information. Moreover, this remote site 16 in Sloane, does not provide information "in response to receipt of said request at said Web site of said retailer," as required by the claims.

Accordingly, we will not sustain the rejection of claims 28 and 40 under 35 U.S.C. § 102(e).

With regard to claims 34 and 46, these claims are a bit broader in scope. They do not recite the separate communications of claims 28 and 40. In fact, claims 34 and 46 merely require a transmission from a manufacturer to a remote Web site regarding manufacturer incentive data, and then updating the manufacturer's incentives database, including graphical image data corresponding to the manufacturer's incentives.

Sloane clearly teaches, in Figure 3b, communicating manufacturer incentive data from the manufacturer to a remote Web site. The sender of promotional information, 16, may be a manufacturer (column 7, lines 11-13) and the information is sent to the consumer, at the retail computer 12, the retail computer 12 being remote from the manufacturer.

Clearly, the information in Sloane is sent over the internet (column 7, line 22). When the manufacturer transmits this information to computer/controller 12, the information is clearly an "update" of the manufacturer's incentives database. The examiner calls this feature "inherent" and we would agree.

The only limitation of claims 34 and 46 not explicitly, or implicitly, disclosed by Sloane is "graphical image data corresponding to said manufacturers incentives." The examiner calls this a "traditional practice to present data using a graphical user interface which presents graphical image data" (answer-page 4), and holding such a disclosure in Sloane to be inherent.

Appellants' position is that Sloane does not disclose updating a manufacturers incentives database storing data defining manufacturers incentives including graphical image data corresponding to the manufacturers incentives with the manufacturer incentive data (principal brief-page 10). While it may be "traditional" to present data using a graphical user interface which presents graphical image data over the internet, "this in-and-of-itself does not teach nor suggest storing data defining manufacturers incentives including graphical image data

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Application No. 09/505,632

corresponding to the manufacturers incentives, as in the claimed invention" (principal brief-page 10).

Since appellants do not deny that it is "traditional" to present data using a graphical user interface which presents graphical image data over the internet and Sloane clearly discloses storage of data defining manufacturers incentives by updating such information in a remote site via the internet, we will sustain the examiner's rejection under 35 U.S.C. § 102(e) since the consumer using the retailer computer/controller will be using a graphical user interface (GUI) to interface with the incentives information stored therein.

While we have sustained the rejection of claims 34 and 46 under 35 U.S.C. § 102(e), because appellants have not convinced us of error in the examiner's reasoning, it is our view that the rejection would have been stronger had it been made under 35 U.S.C. § 103 since, while not explicitly shown by Sloane, it would have been obvious for the consumer to interact with the retailer computer/controller via a GUI regarding the available manufacturers incentives. In any event, it would have been obvious to store the incentives "including graphical image data" since, as admitted by appellants, it is "traditional" to present data using a GUI.



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With regard to the rejections under 35 U.S.C. § 103, we will not sustain these rejections because each of the independent claims 24, 36, 48 and 49 includes limitations similar to those in claims 28 and 40, i.e., transactions involving multiple separate entities, wherein there is transmission from a consumer to a retailer website, transmission from the retailer website to a remote website, and transmission from the remote website to the retailer website, of a list of manufacturer incentives. Finally, the retailer website transmits to the consumer a list of these incentives. As explained supra, Sloane is devoid of any such teaching. Moreover, neither Hoffman nor Smolen provides for this deficiency of Sloane. Accordingly, the examiner has not made out a prima facie case of obviousness with regard to the subject matter of claims 24-27, 29-31, 36-39, 41-43, 48 and 49 and we will not sustain the rejection of these claims under 35 U.S.C. § 103.

#### CONCLUSION

We have sustained the rejection of claims 34 and 46 under 35 U.S.C. § 102(e) but we have not sustained the rejection of claims 28 and 40 under 35 U.S.C. § 102(e) or the rejection of claims 24-27, 29-31, 36-39, 41-43, 48 and 49 under 35 U.S.C. § 103.

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Accordingly, the examiner's decision is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

AFFIRMED-IN-PART

ERROL A. KRASS  
Administrative Patent Judge

*Jerry Smith*  
JERRY SMITH  
Administrative Patent Judge

*Joseph F. Ruggiero*  
JOSEPH F. RUGGIERO  
Administrative Patent Judge

BOARD OF PATENT  
APPEALS AND  
INTERFERENCES

EK/RWK

Appeal No. 2002-0329  
Application No. 09/505,632

NEIFIELD IP LAW, P.C.  
2001 JEFFERSON DAVIS HIGHWAY  
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ARLINGTON, VA 22202

2004-1267, decided 7/29/2004; and BPAI decision on reconsideration 9/30/2004.

7/30/04 RB  
The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 51

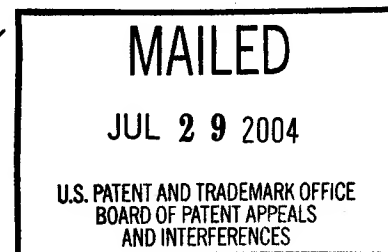
UNITED STATES PATENT AND TRADEMARK OFFICE

\_\_\_\_\_ Action Re Dec. on App.  
BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES 8-604

Ex parte MICHAEL C. SCROGGIE, DAVID A. ROCHON,  
DAVID W. BANKER and WILL GARDENSWARTZ

\_\_\_\_\_ CAT/34-SCRO-US  
Appeal No. 2004-1267 ✓  
Application No. 08/873,974 ✓

\_\_\_\_\_ ON BRIEF \_\_\_\_\_



Before KRASS, FLEMING and DIXON, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the rejection of twice-rejected claims 50-89.

The invention is directed to a system, process and computer program product for distributing product incentives to consumers over a communication network.

Dec App- CAT34SCROUS-040730 RB

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Application No. 08/873,974

Representative independent claim 50 is reproduced as follows:

50. A system for distributing product incentives to consumers over a communication network, comprising:

a cooperative network site configured to store at least one of (i) manufacturer incentives to purchase one of a product and a service offered by a manufacturer and (ii) retailer incentives to purchase one of a product and a service offered by a retailer;

at least one of a manufacturer network site and a retailer network site coupled to said cooperative network site via said communication network; and

a consumer computer coupled to one of said manufacturer network site and retailer network site via said communication network,

wherein said cooperative network site is configured to transmit at least one of said manufacturer incentives and retailer incentives to said consumer over said communication network, in response to a consumer request made over said communication network from one of said manufacturer network site and retailer network site.

The examiner relies on the following references:

Sloane	5,918,211	Jun. 29, 1999
		(filed May 30, 1996)

Narasimhan et al. (Narasimhan)	6,237,145	May 22, 2001
		(filed Aug. 14, 1996)

Claims 50, 51, 60, 61, 70, 71, 80 and 81 stand rejected under 35 U.S.C. § 102(e) as anticipated by Sloane.

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Claims 52-59, 62-69, 72-79 and 82-89 stand rejected under 35 U.S.C. § 103 as unpatentable over Sloane in view of Narasimhan.<sup>1</sup>

Reference is made to the briefs and answer for the respective positions of appellants and the examiner.

#### OPINION

At the outset, we note that while appellants devote eleven pages in the Third Supplemental Brief, filed December 23, 2002, to arguing a rejection under 35 U.S.C. § 112, first paragraph, there is no such rejection on appeal herein since the examiner has made no such rejection in the answer. Accordingly, we consider only the prior art rejections under 35 U.S.C. § 102(e) and § 103.

Independent claims 50, 60, 70 and 80 all stand rejected as being anticipated by Sloane.

Taking claim 50, as exemplary, the examiner applies Sloane as follows:

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<sup>1</sup>While claim 54 is included in the statement of rejection under 35 U.S.C. § 103, at page 5 of the answer, we note that the examiner includes this claim in the rejection under 35 U.S.C. § 102(e) in the explanation of the issues at page 2 of the answer. We will assume that the rejection of this claim is, in fact, under 35 U.S.C. § 103, as that is what the statement of rejection indicates.

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Application No. 08/873,974

The "cooperative network site..." is said to be taught at column 7, lines 22-26, of Sloane. The "at least one of a manufacturer network site and a retailer network site coupled to said cooperative network site via said communication network" is said to be taught by Sloane at column 7, lines 13-17. The "consumer computer..." is said to be taught by Sloane at Figures 4 and 5, where the consumer computer is represented as the portable bar code scanning device. Finally, the wherein clause, "wherein said cooperative network site is configured to transmit at least one of said manufacturer incentives and retailer incentives to said consumer over said communication network, in response to a consumer request..." is said to be taught by Sloane at column 7, line 65 through column 8, lines 7, and at column 8, lines 44-48.

Appellants' response to this rejection appears in the Supplemental Appeal Brief, filed April 11, 2001.

Appellants argue that whereas the instant invention is directed to distributing product incentives to consumers over a communication network, including a consumer computer coupled to various network sites, Sloane is concerned with providing incentives to consumers at a point-of-purchase in a retail store.

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We do not find this argument to be persuasive. Clearly, the network over which the sender, or manufacturer, sends the incentives to the retailer is a "communication" network. While even appellants admit that the processing of incentives between a retailer (or product manufacturer) and a retailer computer/controller 12 is performed over a "communication" network (see Supplemental Appeal Brief of April 11, 2001-page 8), appellants argue that Sloane fails to disclose or suggest distributing product incentives to consumers over a communication network.

Again, we are not persuaded by this argument. While appellants may envision sending the incentives directly to consumers at their home computers, in this regard, the claims require only that there is a "consumer computer" coupled to one of the retailer or manufacturer network sites and that the incentives are transmitted to the consumer over the communication network and in response to a consumer request made over the network. It is our view that Sloane clearly teaches as much. As the examiner indicates, at page 4 of the answer, the "consumer computer" in Sloane may be the hand-held scanning device which the consumer carries through the store.



First, we have already established that the transmissions in Sloane are performed over a "communication network."

Further, in Sloane, a sender of promotional information sends the information to the retailer computer/controller (column 7, lines 13-14). Thus, incentives are provided over a communication network. Then, the consumer is eventually given the promotion, or promotional price, on a given product through a wireless communication network, as the scanner (i.e., "consumer computer") offers the consumer the discount or promotion (note column 8, lines 1-7)<sup>2</sup>.

While one might argue that the promotion is not transmitted *directly* to the consumer computer in Sloane, the promotion is clearly transmitted, at least *indirectly*, to the consumer, and this is all that is required by the instant claims. Moreover, any promotion or discount offered in Sloane is clearly "in response to a consumer request." Not only does Sloane indicate in the Background section that it was known for consumers to

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<sup>2</sup>We note, further, the disclosure of Sloane, in the background section of the document, at column 2, lines 19-20, wherein it is disclosed that there were well known methods of issuing electronic coupons to consumers or promotions to consumers which include "consumer requested promotion/coupons through the use of their home computer and an online computer network."

request coupons over the internet, even in Sloane's actual invention, a consumer first locates and scans a related product required for a promotion and then the discount is taken (see column 8, lines 45-49).

Having determined that the examiner has set forth a prima facie case of anticipation and that appellants have failed to overcome such case by any convincing argument, we will sustain the rejection of claims 50, 51, 60, 61, 70, 71, 80 and 81 under 35 U.S.C. § 102(e).

Turning now to the rejection of claims 52-59, 62-69, 72-79 and 82-89 under 35 U.S.C. § 103, the examiner cites Narasimhan (specifically, column 4, lines 62-65, and column 8, lines 4-13) as providing for the deficiency, in Sloane, of disclosing, as in claim 52, for example, "wherein, in response to a query from said consumer made over said communication network from said manufacturer network site, said cooperative network site transmits a geographically limited list of retailers honoring incentives from said manufacturer and corresponding incentive data to said consumer...."

It is the examiner's position that it would have been obvious to provide such a list of geographically limited retailers so as to give the consumer "the ability to customize

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and control his or her purchase preferences by location" (answer-page 5).

Appellants' Supplemental Appeal Brief, filed April 11, 2001, says nothing about this rejection based on Narasimhan, referring only to a rejection based on a patent to Allsop, together with Sloane. Similarly, neither appellants' Appeal Brief, filed March 2, 2001, nor the Third Supplemental Brief, filed December 23, 2002, says anything about this rejection. Accordingly, nothing therein is persuasive of any error on the examiner's part in rejecting the claims under 35 U.S.C. § 103 over Sloane and Narasimhan.

In fact, we have nothing responsive to the examiner's specific rejection under 35 U.S.C. § 103 until the Reply Brief, filed April 22, 2003, at which point appellants present no argument regarding the merits of the examiner's rejection, preferring, instead, to attack the examiner's rejection under 35 U.S.C. § 103, based on the combination of Sloane and Narasimhan, by attacking it procedurally. More particularly, appellants argue that this constitutes a new ground of rejection which is prohibited by 37 CFR 1.193 (a)(2).

We have reviewed the record of this case and it appears that the rejection under 35 U.S.C. § 103, based on Sloane and

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Application No. 08/873,974

Narasimhan, is not a new ground of rejection as to claims 52, 53, 55-59, 62, 72 and 82, the rejection in the Answer appearing substantially the same as a rejection of those claims in Paper No. 45 (page 9), mailed September 23, 2002.

However, the rejection of claims 54, 63-69, 73-79 and 83-89 under 35 U.S.C. § 103, appearing in the answer, does constitute a new ground of rejection because the rejection of these claims on this ground does not appear in Paper No. 45.

Accordingly, we will summarily sustain the rejection of claims 52, 53, 55-59, 62, 72 and 82 under 35 U.S.C. § 103 because the examiner seems to have stated a reasonable case for a finding of obviousness, which has not been rebutted by appellants in any substantive manner. We note, however, that our affirmance of this rejection is pro forma, and not based on substantive arguments since appellants have presented no substantive arguments with regard to this rejection.

With regard to the rejection of claims 54, 63-69, 73-79 and 83-89 under 35 U.S.C. § 103, this is a new ground of rejection, not permitted under 37 CFR 1.193 (a)(2). Accordingly, with regard to the rejection of these claims, we remand the application to the examiner to either withdraw the rejection or reopen prosecution, giving appellants an opportunity to respond

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to the new ground of rejection if it is to be applied.

Since we have sustained the rejection of claims 50, 51, 60, 61, 70, 71, 80 and 81 under 35 U.S.C. § 102(e) and the rejection of claims 52, 53, 55-59, 62, 72, and 82 under 35 U.S.C. § 103, the examiner's decision is affirmed.

The application is also remanded to the examiner for action consistent with the reasoning herein with regard to the rejection of claims 54, 63-69, 73-79 and 83-89 under 35 U.S.C. § 103.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

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Application No. 08/873,974

This application, by virtue of its "Special" status, requires an immediate action, MPEP 708.01 (8th ed., August, 2001).

AFFIRMED AND REMANDED

Enoch C. Kern

ERROL A. KRASS  
Administrative Patent Judge

*Michael R. Fleming*  
MICHAEL R. FLEMING

MICHAEL R. FLEMING /  
Administrative Patent Judge

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JOSEPH L. DIXON

JOSEPH L. DIXON  
Administrative Patent Judge

EK/RWK

Appeal No. 2004-1267  
Application No. 08/873,974

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10-704  
RB

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

Paper No. 53

UNITED STATES PATENT AND TRADEMARK OFFICE

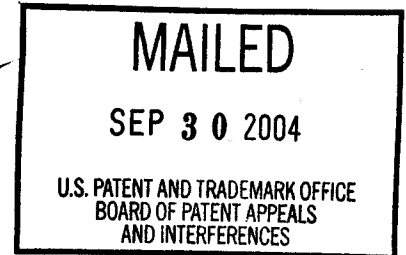
Atty Review: 10-704

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte MICHAEL C. SCROGGIE, DAVID A. ROCHON,  
DAVID W. BANKER and WILL GARDENSWARTZ

Appeal No. 2004-1267 ✓  
Application No. 08/873,974 ✓

ON BRIEF



Before KRASS, FLEMING and DIXON, Administrative Patent Judges.  
KRASS, Administrative Patent Judge.

ON REQUEST FOR REHEARING

Appellants request rehearing of our decision of July 29, 2004, wherein we affirmed the examiner's decision rejecting claims 52, 53, 55-59, 62, 72 and 82 under 35 U.S.C. § 103.

Initially, appellants argue that we have not decided an issue involving a rejection under 35 U.S.C. § 112, even though that rejection had been withdrawn by the examiner and was not on

Doc CAT34SCROUS-041001 RB



appeal before us. Appellants take the position that the rejection was, in fact, on appeal because they had appealed from the examiner's rejection of the claims under 35 U.S.C. § 112 and that we must decide the propriety of this rejection even in the face of the examiner's withdrawal of such rejection.

We disagree. Once an examiner withdraws a rejection of claims, at or before the time of the answer, that rejection is no longer before us on appeal and we will not issue an opinion as to the propriety of a now-theoretical rejection.

Appellants are concerned that since there was a suggestion of reopening prosecution in our decision<sup>1</sup>, a lack of a decision by us regarding the § 112 rejection might leave appellants open to re-imposition of that rejection by the examiner.

If, and when, the examiner deems it appropriate to make a rejection under 35 U.S.C. § 112, and such rejection is appealed to us, we will treat that rejection. But, at least at the time of the answer, the examiner no longer believed a rejection under 35 U.S.C. § 112 to be proper and chose not to make it. The Board would find itself in an awkward position attempting to decide an

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<sup>1</sup>We indicated in the decision, at page 9, that the examiner's rejection of claims 54, 63-69, 73-79, and 83-89 under 35 U.S.C. § 103 was a new ground of rejection, not permitted under 37 CFR 1.193 (a)(2), and remanded to the examiner to either withdraw the rejection or reopen prosecution.

issue on which both appellants and the examiner are in apparent agreement, viz., that a rejection under 35 U.S.C. § 112 was not improper. Where there is no controversy, there is no need for the Board, or any tribunal, to make a decision.

Accordingly, we decline appellants' invitation to render a decision on whether claims are proper, within the meaning of 35 U.S.C. § 112.

Appellants further argue that we misapprehended the claim limitation, "in response to a consumer request..." and the reasoning in support thereof in the brief filed July 10, 2001.

Part of the problem arises from multiple filings, by appellants, of various briefs and supplemental briefs, and attempting to incorporate by reference, into the arguments, all of these briefs. Thus, rather than including all of appellants' arguments in a single brief and/or a brief and possibly one reply brief, the record is rife with arguments scattered throughout several papers.

In any event, our decision did treat the "in response to a consumer request..." limitation of the claims, by indicating, at page 6 of our decision, that any promotion or discount offered in Sloane is clearly "in response to a consumer request." The reason is explained in the paragraph bridging pages 6-7 of the

decision. Thereat, we indicated that the background section of Sloane disclosed that it was known for consumers to request coupons over the internet (see column 2, lines 18-21). Further, we noted, at page 7 of the decision, that even in Sloane's actual invention, a consumer first locates and scans a related product required for a promotion (see column 8, lines 45-49). Accordingly, it is clear that any promotion, or discount, issued is "in response to a consumer request..." as claimed.

Thus, it is clear that, contrary to appellants' assertions, we did not ignore the "in response to a consumer request..." limitation of the claims.

Appellants further argue that we overlooked the brief filed July 10, 2001 and the reasoning therein relative to the inapplicability of the Narasimhan reference. We have reviewed the second supplemental brief, filed July 10, 2001, but find nothing therein to cause us to modify our decision. In that document, appellants simply point out that "there is no evidence supporting the examiner's rationale that transmitting a geographically limited list of retailers honoring incentives in response to a query is a more efficient way of obtaining desired information;" and that the examiner's conclusion of obviousness in combining the teachings of Narasimhan and Sloane "is vague" and "unsupported" by any evidence.

We find appellants' arguments insufficient to overcome the examiner's reasonable explanation that Narasimhan suggests, at column 4, lines 62-65, and column 8, lines 4-13, providing for certain geographic-specific promotions to consumers. Again, appellants do not appear to have addressed the specific teachings of Narasimhan, as pointed out by the examiner. Appellants' mere assertion that there is no evidence supporting the examiner's rationale, or that the examiner's conclusions are "vague," fails to point out the error in the examiner's position that Narasimhan clearly suggests using geographic-specific promotions.

Having responded to each and every assertion made by appellants in the Request for Rehearing, filed August 6, 2004, and finding nothing persuasive therein, we decline to make any modification to our decision of July 29, 2004. Appellants' request for rehearing is granted to the extent that we have reviewed and reconsidered our decision and the evidence of record, but the request is denied with respect to making any changes therein.

Appeal No. 2004-1267  
Application No. 08/873,974

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a).

DENIED

Ernest A. Ku

ERROL A. KRASS  
Administrative Patent Judge

Mr R F

MICHAEL R. FLEMING  
Administrative Patent Judge

BOARD OF PATENT  
APPEALS AND  
INTERFERENCES

*[Signature]*

JOSEPH L. DIXON  
Administrative Patent Judge

EK/RWK

Appeal No. 2004-1267  
Application No. 08/873,974

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